

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

GARY BRICE MCBAY,
Plaintiff,

VERSUS CIVIL ACTION NO: 1:07cv1205LG-RHW

HARRISON COUNTY, MISSISSIPPI,
by and through its Board of
Supervisors; HARRISON COUNTY
SHERIFF, George Payne, in his
official capacity CORRECTIONS
OFFICER MORGAN THOMPSON,
acting under color of state law,
Defendants.

DEPOSITION OF GARY BRICE MCBAY

Taken at the offices of Brown Buchanan,
P.A., 796 Vieux Marche' Mall, Suite 1,
Biloxi, Mississippi, on Tuesday, August
18, 2009, beginning at 12:30 p.m.

APPEARANCES:

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ATTORNEYS FOR GEORGE PAYNE, JR.

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1 apartment?

2 A. I sure don't, sir.

3 Q. So did you go -- you took your truck,
4 went to the bar by yourself?

5 A. Yes, sir.

6 Q. About what time did you get there?

7 A. Maybe 6:30.

8 Q. Okay. Had you been to this bar before?

9 A. No, sir.

10 Q. How did you pick out Chopper's?

11 A. Because I had drove around the area just
12 because I was here, you know, evaluating the area,
13 damages.

14 Q. So had you seen Chopper's Lounge before
15 and knew it was here?

16 A. Yes.

17 Q. Okay. Did you know what kind of crowd
18 hung out there?

19 A. No, sir.

20 Q. Did Chopper's give you a clue?

21 A. It does now.

22 Q. So you got there at 6:30. Had you been
23 drinking before you got there?

24 A. No, sir.

25 Q. All right. So tell me -- just lead me

1 through. You went in, and then what happened?

2 A. I had a couple of beers, and obviously
3 I -- they wanted me to leave.

4 Q. After you had two beers or more than
5 two?

6 A. More.

7 Q. More?

8 A. Yes.

9 Q. How much more?

10 A. I don't recall.

11 Q. Do you remember how drunk you were?

12 A. I don't recall.

13 Q. Well, tell me what you do recall about
14 that evening while you were in Chopper's.

15 A. While I was at Chopper's?

16 Q. You remember going in --

17 A. Yes, sir.

18 Q. -- and having more than two beers?

19 A. Yes, sir.

20 Q. About what time of the night was it that
21 you tried to leave?

22 A. I don't recall.

23 Q. Did you leave on your own, just walk
24 out, or did someone escort you out?

25 A. I was escorted.

1 Q. Did you read his deposition?

2 A. No, sir.

3 Q. Do you remember the cops showing up at
4 Chopper's bar?

5 A. No, sir.

6 Q. You don't remember having an altercation
7 with Mr. Randazzo?

8 A. No, sir.

9 Q. Do you remember the cops doing or saying
10 anything to you at the bar?

11 A. No, sir.

12 Q. Do you remember them hogtying you?

13 A. Yes, sir.

14 Q. That was the cops at Chopper's, right?

15 A. Yes, sir.

16 Q. You remember that, but you're blank --

17 A. Yes, sir.

18 Q. -- the time between that? How can you
19 remember that one incident without anything else
20 around it?

21 A. Don't know, sir.

22 Q. So the police came in. They hogtied
23 you. That means hands and legs behind you and
24 tied up?

25 A. At some point in the night, I was

1 hogtied.

2 Q. Did I describe that -- your legs and
3 hands behind your back --

4 A. Yes, sir.

5 Q. -- and tied together?

6 A. Yes, sir.

7 Q. Did they throw you in the backseat of
8 the police car?

9 A. I was put in -- I was placed in the
10 backseat of the cop car.

11 Q. You were hogtied at the time?

12 A. I do believe so.

13 Q. Do you know why they had to hogtie you?

14 A. I do not.

15 Q. You don't know if you were being unruly
16 or anything?

17 A. No, sir.

18 Q. So do you remember the ride from
19 Chopper's in the backseat? Were you hogtied the
20 whole time?

21 A. I don't recall.

22 Q. Do you remember getting to the jail?

23 A. No, sir.

24 Q. So you don't know if you were still
25 hogtied or not?

1 A. No, sir.

2 Q. Do you remember if you were handcuffed
3 by the arresting officers?

4 A. No, sir. I was hogtied, so obviously I
5 was handcuffed.

6 Q. But your legs were secured, too, also,
7 right?

8 A. Correct.

9 Q. Did they use shackles or handcuffs or
10 what?

11 A. I don't recall.

12 Q. So what happened when you got to the
13 jail? Is your memory good about that?

14 A. What part?

15 Q. When you got to the jail in the police
16 car.

17 A. No.

18 Q. Do you remember going in the jail?

19 A. No.

20 Q. Do you remember standing at the counter
21 and being processed into the jail?

22 A. No, sir.

23 Q. Do you remember going through the
24 booking room at all that day?

25 A. No, sir.

1 Q. Do you remember going into the shower?

2 A. No, sir.

3 Q. Do you remember coming out of the
4 shower?

5 A. No, sir.

6 Q. What do you remember after -- do you
7 remember having a jail uniform put on you?

8 A. No, sir.

9 Q. Do you remember having your photo made?

10 A. Yes, sir.

11 Q. Okay. How long after -- when was your
12 photo made after you got to the jail? Do you have
13 any idea how long of time passed by?

14 A. The next morning.

15 Q. So you were photographed the next
16 morning?

17 A. Yes.

18 Q. Is that pretty much the first thing you
19 remember?

20 A. No.

21 Q. What is the first thing you remember?

22 A. Being beat.

23 Q. Okay. I just asked if you remembered
24 going into the shower and what happened and coming
25 out, and you didn't remember.

1 A. I don't recall.

2 Q. Do you know where else you would have
3 been hit?

4 A. I don't recall.

5 Q. Do you remember coming out of the
6 shower?

7 A. No.

8 Q. Okay. Did your attorney show you the
9 videotape of the booking area?

10 A. Yes, sir.

11 Q. So if you remember something today,
12 could it be because of looking at that video?

13 A. No, sir.

14 Q. You remember that one part right in the
15 middle, correct?

16 A. What part in the middle?

17 Q. In the shower being beat.

18 A. Right.

19 Q. And do you remember what you were saying
20 or doing at the time?

21 A. Please, no more.

22 Q. Do you remember anything else you said?

23 A. No, sir.

24 Q. Were you cursing the officers?

25 A. I don't recall.

1 Q. Do you remember just making noises and
2 talking a lot?

3 A. I don't recall.

4 Q. But you remember, "please, no more,"
5 that one sentence?

6 A. Yes, sir.

7 Q. Is that correct?

8 A. Yes, sir.

9 Q. Can you tell me how you remember that
10 one sentence and can't remember anything else you
11 said or did?

12 A. Can't tell you.

13 Q. So you came out of the shower, and then
14 you were dressed in your prison garb and went to
15 the holding blocks; is that right?

16 A. I suppose.

17 Q. But you're not sure?

18 A. That's right.

19 Q. But you do remember having your photo
20 made that next morning?

21 A. Yes, sir.

22 Q. Okay. And what happened after that?

23 A. I was put back into the holding cell.

24 Q. And what happened? Did you bond out?

25 A. I'm sorry, sir.

1 Q. Did you bond out of jail at that time?

2 A. Yes, sir.

3 Q. Who came to get you?

4 A. My parents. And ASAP Bail Bonds.

5 Q. What happened to the charges against you
6 from Chopper's?

7 A. Everything was dropped.

8 Q. Are you sure?

9 A. As far as I know.

10 Q. While we're on the area of the -- your
11 criminal history, back in October of 1994, you
12 were arrested for aggravated assault with a deadly
13 weapon; is that correct?

14 A. That's correct.

15 Q. Tell me about that. Who did you
16 assault, when and why?

17 A. I was assaulted -- or I assaulted a
18 gentleman in ag class.

19 Q. At school?

20 A. Yes, sir.

21 Q. Were you a junior or senior then?

22 A. Senior.

23 Q. And what was the altercation about?

24 A. He wanted to bully me.

25 Q. That happened a lot in your career,